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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 FRANCIS ALBERT ANTHONY MANUCAY CALDERON
14 3541 Patricia St.
West Covina, CA 91792

15 Registered Nurse License No. 502965

16 Respondent.

Case No. 2009-172

ACCUSATION

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18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about September 2, 1994, the Board of Registered Nursing (Board)
24 issued Registered Nurse License No. 502965 to Francis Albert Anthony Manucay Calderon
25 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on December 31, 2009, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 2750 provides that the Board may discipline any licensee,
7 including a licensee holding a temporary or an inactive license, for any reason provided in Article
8 3 (commencing with section 2750) of the Nursing Practice Act.

9 5. Section 2764 provides, in part, that the expiration of a license shall not
10 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
11 to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the
12 Board may renew an expired license at any time within eight years after the expiration.

13 6. Section 2761 states, in part:

14 The board may take disciplinary action against a certified or licensed nurse
15 or deny an application for a certificate or license for any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the
17 following:

18 (1) Incompetence, or gross negligence in carrying out usual certified or
19 licensed nursing functions.

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21 (d) Violating or attempting to violate, directly or indirectly, or assisting in
22 or abetting the violating of, or conspiring to violate any provision or term of this
23 chapter [chapter 6, commencing with section 2700] or regulations adopted
24 pursuant to it.

25 **STATUTORY REGULATIONS**

26 7. California Code of Regulations, title 16, section 1442, states:

27 As used in Section 2761 of the code, "gross negligence" includes an
28 extreme departure from the standard of care which, under similar circumstances,
would have ordinarily been exercised by a competent registered nurse. Such an
extreme departure means the repeated failure to provide nursing care as required
or failure to provide care or to exercise ordinary precaution in a single situation
which the nurse knew, or should have known, could have jeopardized the client's
health or life.

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1 subdivision (a), on the grounds of unprofessional conduct, in that Respondent engaged in
2 assaultive or abusive conduct while on duty as a registered nurse in the emergency room at
3 Beverly Hospital, Montebello, California (BH), as follows:

4 On or about January 1, 2007, at approximately 10:00 p.m., via ambulance and
5 police escort, client/patient Brian C. was admitted for alcohol intoxication. Patient Brian C. was
6 initially very agitated and combative and placed in four point restraints. According to the
7 patient's medical records, the patient's family called paramedics because patient had apparently
8 been drinking and began hitting his head on the ground. Respondent was assigned to care for
9 patient Brian C. While Respondent was performing emergency room services on patient Brian
10 C., Respondent and patient Brian C. had a verbal exchange involving inappropriate and
11 threatening language. After patient Brian C. made threats against Respondent's family,
12 Respondent responded by using his right hand with a closed fist to strike patient Brian C. in the
13 left side of his face while another BH staff member watched.

14 b. About an hour later, Respondent was admitted to BH emergency room as
15 a patient for a work related injury of his right wrist and hand. A physical exam found he had a
16 fractured bone in his right hand. Montebello Police Department officers were summoned and a
17 report was written. As a result of Respondent striking a patient, BH terminated Respondent's
18 employment.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Gross Negligence)**

21 13. Respondent has subjected his license to disciplinary action under section
22 2761(a)(1), on the grounds of unprofessional conduct, in conjunction with California Code of
23 Regulations, title 16, section 1442, in that Respondent was grossly negligent with respect to the
24 care rendered to patient Brian C. Respondent's act of punching a patient in the face who is in
25 four point restraints, as set forth in paragraph 13 above, constituted an extreme departure from
26 the standard of care which, under similar circumstances, would have ordinarily been exercised by
27 a competent registered nurse. In this situation, Respondent failed to exercise ordinary precaution

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1 when he punched the patient in the face, which he knew, or should have known, could have
2 jeopardized the client's health or life.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Incompetence)**

5 14. Respondent has subjected his license to disciplinary action under section
6 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in conjunction with
7 California Code of Regulations, title 16, sections 1443 and 1443.5, in that Respondent was
8 incompetent in applying the nursing process, as follows:

9 a. Respondent failed to formulate a care plan to ensure that direct and
10 indirect nursing care services provided for the patient's safety, comfort and protection, as shown
11 by Respondent's failure to provide for the patient's safety during the incident set forth in
12 paragraph 12, above.

13 b. Respondent failed to act as patient Brian C.'s advocate, as the
14 circumstances required, in that Respondent engaged in a verbally abusive conversation with the
15 patient and then punched the patient in the face, as set forth in paragraph 12, above.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Code)**

18 15. Respondent has subjected his license to disciplinary action under section
19 2761, subdivision (d), in that he violated section 2761, subdivision (a)(1), and California Code of
20 Regulations, title 16, sections 1442, 1443, 1443.5, and 1444, as set forth in paragraphs 12
21 through 14, above.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct)**

24 16. Respondent has subjected his license to disciplinary action under section
25 2761, subdivision (a), in that he committed acts which constitute unprofessional conduct , as set
26 forth in paragraphs 12 through 15, above.

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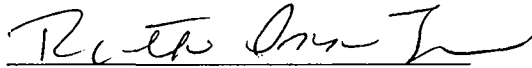
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License No. 502965, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/17/09



RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant